



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0005; FRL-9910-33-Region 3]

**Approval and Promulgation of Implementation Plans; Delaware;
Regional Haze Five-Year Progress Report State Implementation Plan**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC). Delaware's SIP revision addresses requirements of the Clean Air Act (CAA) and EPA's rules that require states to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing implementation plan addressing regional haze (regional haze SIP). EPA is approving Delaware's SIP revision on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: This final rule is effective on [insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0005. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 25, 2014 (79 FR 10442), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. In the NPR, EPA proposed approval of Delaware's progress report SIP, a report on progress made in the first implementation period towards RPGs for the Class I area outside the State that is affected by emissions from Delaware's sources. This progress report SIP and accompanying cover letter also included a determination that Delaware's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018.

States are required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and in each mandatory Class I Federal area outside the state which may be affected by emissions

from within the state. *See* 40 CFR 51.308(g). In addition, the provisions under 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze SIP. The first progress report SIP is due five years after submittal of the initial regional haze SIP. On September 25, 2008, Delaware DNREC submitted the State's first regional haze SIP in accordance with 40 CFR 51.308(b).¹ The progress report SIP revision was submitted by Delaware on September 24, 2013, and EPA finds that it satisfies the requirements of 40 CFR 51.308(g) and 308(h).

II. Summary of SIP Revision

Delaware's September 24, 2013 progress report SIP addresses progress made towards RPGs of the Class I area outside the State that is affected by emissions from Delaware's sources. This progress report SIP also includes a determination of the adequacy of the State's existing regional haze SIP. Delaware does not have any Class I areas within its borders. However, in Delaware's September 25, 2008 regional haze SIP submittal, DNREC had identified, through an area of influence modeling analysis based on back trajectories in consultation with the regional planning organization, Mid-Atlantic/Northeast Visibility Union (MANE-VU), only one Class I area, Edwin B. Forsythe National Wildlife Refuge (Brigantine Wilderness Area), in the neighboring State of New Jersey, that can be potentially impacted by Delaware sources. *See* 76 FR 42557 (July 19, 2011).

The provisions in 40 CFR 51.308(g) require a progress report SIP to address seven elements.

¹ On July 19, 2011, EPA finalized an approval of Delaware's September 25, 2008 regional haze SIP to address the first implementation period for regional haze. *See* 76 FR 42557.

EPA finds that Delaware's progress report SIP addressed each element under 40 CFR 51.308(g). The seven elements and EPA's conclusion are briefly summarized below; however, the detailed rationale for EPA's action is explained in the NPR and will not be restated here. No public comments were received on the NPR.

The provisions in 40 CFR 51.308(g) require progress report SIPs to include a description of the status of measures in the approved regional haze SIP; a summary of emissions reductions achieved; an assessment of visibility conditions for each Class I area in the state; an analysis of changes in emissions from sources and activities within the state; an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; an assessment of the sufficiency of the approved regional haze SIP; and a review of the state's visibility monitoring strategy. As explained in detail in the NPR, EPA finds that Delaware's progress report SIP addressed each element and has therefore satisfied the requirements under 40 CFR 51.308(g).

In addition, pursuant to 40 CFR 51.308(h), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions based on information in the progress report. One possible action is submission of a negative declaration to EPA that no further substantive revision to the state's existing regional haze SIP is needed. In its progress report SIP, Delaware submitted a negative declaration that it had determined that the existing regional haze SIP requires no further substantive revision to achieve the RPGs for the Class I area affected by Delaware's sources. As explained in detail in the NPR, EPA concludes Delaware has adequately addressed 40 CFR

51.308(h) because the visibility data trends at the Class I area impacted by Delaware's sources and the emissions trends of Delaware's largest emitters of visibility-impairing pollutants both indicate that Brigantine Wilderness Area, which is the Class I area impacted by Delaware sources, will be able to meet or exceed the RPGs for 2018.

III. Final Action

EPA is approving Delaware's Regional Haze five-year progress report SIP revision, submitted September 24, 2013, as meeting the applicable regional haze requirements as set forth in 40 CFR 51.308(g) and 51.308(h).

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve Delaware’s regional haze five-year progress report SIP revision may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: April 21, 2014.

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I—Delaware

2. In §52.420, the table in paragraph (e) is amended by adding the entry for Regional Haze Five-Year Progress Report at the end of the table to read as follows:

§52.420 Identification of plan.

* * * *

(e) * * *

| Name of non-regulatory SIP revision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Additional explanation |
|---|---|----------------------|--|------------------------|
| * * * * * | * * | | | |
| Regional Haze Five-Year Progress Report | Statewide | 9/24/13 | [Insert Federal Register publication date] [Insert page number where the document begins] | |

[FR Doc. 2014-10111 Filed 05/02/2014 at 8:45 am; Publication
Date: 05/05/2014]